

## **REMARKS**

This paper is responsive to any paper(s) indicated above, and is responsive in any other manner indicated below.

## **EXAMINER INTERVIEW ACKNOWLEDGED AND STATEMENT OF SUBSTANCE**

This paper is (at least partially) responsive to the examiner interview conducted 12 February 2009, by and between (as indicated on the Interview Summary document) Supervisory Primary Examiner (SPE) Kambiz Zand, assigned Examiner Teshome Hailu, Applicant's foreign representative Kentaro Asai and attorney Paul J. Skwierawski, in the present application. The foregoing amendments include amendments discussed during, or resultant from, the examiner interview, and the following includes a reiteration of discussions/arguments had during the examiner interview. More particularly, it was agreed upon by all attendees of the interview that incorporation of Applicant's claim 18 into each of the independent claims would overcome the rejection(s) or record, and it is respectfully submitted that the present amendments effect such incorporation of claim 18 into each of the independent claims.

The Examiner is respectfully requested to make an independent assessment as to whether accurate and sufficient allowable features/limitations have been incorporated into the above-mentioned claims. Applicant and the undersigned again respectfully thank the SPE and Examiner for such indication of allowable subject matter.

### **PENDING CLAIMS**

Claims 1, 7, 8, 10 and 13-17 were pending, under consideration and subjected to examination in the Office Action. Appropriate claims have been amended, canceled and/or added (without prejudice or disclaimer) in order to adjust a clarity and/or focus of Applicant's claimed invention. That is, such changes are unrelated to any prior art or scope adjustment and are simply refocused claims in which Applicant is presently interested. At entry of this paper, Claims 1, 7, 8, 10 and 13-21 will be pending for further consideration and examination in the application.

### **REJECTION UNDER 35 USC '103**

The 35 USC '103 rejection of claims 1-2, 7-8, 10 and 13-17 being unpatentable over Kuwano (U.S. Patent Pub 2003/0226011) in view of Rofheart (U.S. Patent 7,058,414) is respectfully traversed. However, such rejections have been rendered obsolete by the present clarifying amendments to Applicant's claims as mentioned above within the Statement of Substance section of this paper, and accordingly, traversal arguments are not appropriate at this time. More particularly, as mentioned above, it was agreed upon by all attendees of the interview that incorporation of Applicant's claim 18 into each of the independent claims would overcome the rejection(s) on record, and it is respectfully submitted that the present amendments effect such incorporation of claim 18 into each of the independent claims.

As a result of all of the foregoing, it is respectfully submitted that the applied art (taken alone and in the Office Action combinations) would not support a '103

obviousness-type rejection of Applicant's claims. Accordingly, reconsideration and withdrawal of such '103 rejection, and express written allowance of all of the '103 rejected claims, are respectfully requested.

#### **DOUBLE PATENTING REJECTION - TRAVERSED/NOT SUPPORTED**

The non-statutory double patenting rejection is respectfully traversed because such rejection does not provide the factual analysis required for such rejections under U.S. patent law, i.e., the Examiner has not satisfied his/her initial burden to adequately support the rejection. More particularly, MPEP 804 providing guidance for examining states that

"Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 USC 103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 US 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 USC 103 are employed when making an obviousness-type double patenting analysis. These factual inquiries are summarized as follows:

- (A) Determine the scope and content of a patent claim and the prior art relative to a claim in the application at issue;
- (B) Determine the differences between the scope and content of the patent claim and the prior art as determined in (A) and the claim in the application at issue;
- (C) Determine the level of ordinary skill in the pertinent art; and
- (D) Evaluate any objective indicia of non-obviousness.

...

Any obviousness-type double patenting rejection should make clear:

- (A) The differences between the invention defined by the conflicting claims - a claim in the patent compared to a claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent."

The rejection does not make clear the differences, or the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent. Applicant respectfully submits that the above analysis should be provided in order for

the Examiner to satisfy his/her initial burden to support the rejection, or the rejection should be withdrawn.

Based upon the above, reconsideration and withdrawal of the nonstatutory double patenting rejection, are respectfully requested.

In the event that an obviousness-type double-patenting rejection becomes the only issue barring allowance of the application, the Examiner is invited to telephone the undersigned at the local Washington, D.C., telephone number of 703-312-6600 to give Applicant the option of considering the filing a terminal disclaimer to gain immediate allowance. The Examiner is respectfully thanked in advance for such consideration.

#### **EXAMINER INVITED TO TELEPHONE**

The Examiner is herein invited to telephone the undersigned attorneys at the local Washington, D.C. area telephone number of 703/312-6600 for discussing any Examiner's Amendments or other suggested actions for accelerating prosecution and moving the present application to allowance.

#### **RESERVATION OF RIGHTS**

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer. That is, any above statements, or any present amendment or cancellation of claims (all made without prejudice or disclaimer), should not be taken as an indication or admission that any objection/rejection was valid, or as a disclaimer of any scope or subject matter.

Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, i.e., Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are now in condition for allowance.

To the extent necessary, Applicant petitions for an extension of time under 37 CFR '1.136. Authorization is herein given to charge any shortage in the fees, including extension of time fees and excess claim fees, to Deposit Account No. 01-2135 (Case No. 500.43478X00) and please credit any excess fees to such deposit account.

Based upon all of the foregoing, allowance of all presently-pending claims is respectfully requested.

Respectfully submitted,

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